

SPECIAL CIVIL APPLICATION NO.10929 OF 1995

CORAM : N N MATHUR, J.

(Date:7.3.1996)

Ms. Shilpa Shah for Mr M M Desai, Advocate for the petitioner
Ms. Harsha Devani, AGP for the State

ORAL ORDER

This Special Civil Application has been filed seeking direction to quash and set aside the orders at Annexures 'C', 'D', and 'E' respectively passed by the Sub-Divisional Magistrate on 30.12.1994, by District Magistrate on 11.7.1995 and the Home Department on 11.9.1995. The say of the petitioner is that he is running a Hotel on the high way of Village Lakhni and in the S.T. canteen with licence to run the hotel for 24 hours since last number of years. The Sub-Divisional Magistrate, Palanpur issued a show cause notice dated 30.4.1994 stating that as the drivers of the vehicle are parking their vehicles on the road side when they take tea and water and hence the road is being blocked and that moreover, there is possibility of illegal activities being committed, and therefore, why the timings of the licensee should not be curtailed. The show cause notice was replied by the petitioner. It was stated that he was not carrying on any illegal activities. The sub-Divisional Magistrate, by order dated 30.12.1994, curtailed the period of licence from 7 am to 11 p.m. The petitioner unsuccessfully carried the matter to the District Magistrate as well as to the State Government.

2. Ms Shilpa Shah for Mr M M Desai, learned Advocate appearing for the petitioner submits that the impugned orders are illegal being passed indisregard to the principles of natural justice. She has relied on an unreported decision of this Court rendered in Special Civil Application No.566/72 dated 29.1.1977 annexed by the petitioner at annexure 'F'. The another decision which is placed on record by the learned Advocate for the petitioner is the decision reported in X GLR 769. I have gone through the authorities cited by the learned Advocate but they are of no assistance to the petitioner. In the present case, the petitioner was given show notice and the impugned order has been passed only after considering the replies submitted by him.

3. Ms. Harasha Devani, learned AGP has brought to my notice a decision of this Court reported in IV GLR 897. Suffice it to refer decision of the Supreme Court in the case of BOARD OF

MINING EXAMINATION v. RAMJEE, reported in AIR 1977 SC 965 wherein it is held that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. In the present case, as already stated, the impugned order has been passed by the Sub-Divisional Magistrate after issuing show cause notice to the petitioner. The reply submitted by the petitioner has been considered. The submissions of the petitioner have been considered by the District Magistrate as well as the State Government.

4. In view of the matter, I am not inclined to exercise the powers under Article 226 of the Constitution of India. This Special Civil Application is rejected accordingly. Notice discharged.

Date: 7.3.1996 (N N MATHUR, j.)

...